REPORT OF THE

CONSULTATION COMMITTEE

ON THE

RETAIL BUSINESS UNIFORM CLOSING DAY ACT

January, 1991

91-02922/

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January 22, 1991

Honourable Joel R. Matheson, Q.C.
Attorney General
Province of Nova Scotia
Halifax, N. S.

Dear Mr. Matheson:

On behalf of the Consultation Committee on the Retail Business Uniform Closing Day Act, I am pleased to submit this report summarizing our findings and recommendations.

I trust that we have fulfilled our mandate as prescribed and that we have made a meaningful contribution toward resolving the issues associated with this legislation.

Respectfully submitted,

R. Wendell Phinney
Chairman

Section 1

Introduction

The Retail Business Uniform Closing Day Act governs the days of the year upon which retail business in Nova Scotia is restricted. The uniform closing days prescribed in the Act are:

(i) Boxing Day
(ii) Canada Day
(iii) Christmas Day
(iv) Good Friday
(v) Labour Day
(vi) New Year's Day
(vii) Sunday, and
(viii) Thanksgiving Day

The legislation and its regulations allow for certain exemptions to the order requiring retail businesses to close upon uniform closing days. These exemptions are based upon the type of retail establishment involved and provide the public with essential goods and services upon those days.

In March of 1990, the Cabinet of the Government of Nova Scotia added a regulation pursuant to the Act allowing any retail business with a sales area not in excess of four thousand square feet, regardless of type, to be open on Sunday, except on Easter Sunday or when Canada Day, Christmas Day, Boxing Day or New Year's Day falls on a Sunday.

Objections to the amendment were raised immediately upon its announcement. These objections prompted Cabinet to appoint, on October 11, 1990, a Consultation Committee on the Retail Business Uniform Closing Day Act and charge the Committee with the following mandate:

(a) to review the present exemptions to the Retail Business Uniform Closing Day law as contained in the Retail Business Uniform Closing Day Act and the regulations pursuant to that Act;

(b) to review the meaning of terms contained in the Retail Business Uniform Closing Day Act and the regulations and recommend new definitions or changes in terms used at present;

(c) to invite and consider submissions from the public respecting the matters which the Consultation Committee will review; and

(d) to report and make recommendations to the Attorney General for ultimate consideration by the Lieutenant Governor in Council.

The Consultation Committee appointed consisted of Mr. R. Wendell Phinney of Kentville as Chairman with Dr. Ellen McLean of Eureka, Pictou County and Mr. Faisal Joseph of Truro as members.

Mr. Peter Spurway, Communications Officer with the Department of Attorney General, was assigned to the Committee to act as a staff and resource person.

Section 2

Description of Process

The first meeting of the Committee was held on Friday, October 19, 1990. It was decided that 10 hearings should be held throughout Nova Scotia in order to gain the input of those concerned with the issues at hand. The following schedule was devised:

Thursday, Nov. 1	Truro
Friday, Nov. 2	Amherst
Tuesday, Nov. 16	Dartmouth
Tuesday, Nov. 20	Halifax
Wednesday, Nov. 21	New Glasgow
Thursday, Nov. 22	Port Hawkesbury
Friday, Nov. 23	Sydney
Wednesday, Nov. 28	Yarmouth
Thursday, Nov. 29	Bridgewater
Friday, Nov. 30	Kentville

A similar format was designed for each hearing. From 1:30 to 5 o'clock each afternoon, submissions were heard from interested parties such as retail organizations, community groups and consumer groups. In the evening, beginning at 7 o'clock, the general

public was invited to meet with the Committee to discuss their concerns. All of the Committee's sessions were open to the public.

Advertisements were placed in newspapers covering the province and the media were informed of the Committee's schedule and their co-operation was sought in publicizing the hearings.

The Committee was provided with background material on the Act and regulations as well as copies of corresponding legislation from every province in Canada.

Section 3

Issues, Findings and Recommendations

ISSUES

A number of issues emerged through the hearing process, the research done by, and the correspondence received by the Committee.

Those issues are:

1. Should the March 1990 regulation, which allows any retail outlet with a retail sales area under 4,000 square feet to open on Sunday, be repealed?

2. Does the lack of restrictions on the size and product mix of drugstores give them an unfair advantage over competitors outside the health care field?

3. Is 4,000 square feet of retail sales area too large a limit for a convenience store?

4. Should "flea markets" be defined for the purposes of the Retail Business Uniform Closing Day Act and should that definition allow the sale of used clothing and second hand items?

5. Should the Act contain a provision for those, who from conscience or religious practice, do not hold Sunday as the Sabbath or as their common day of rest?

6. What is the statutory reference for the separation of authority between the province and municipalities with regard to uniform closing days and hours of retail operation?

FINDINGS AND RECOMMENDATIONS

The following is a compilation of relevant presentations to the Committee on these issues; the findings of the Committee; and the Committee's recommendations.

ISSUE #1 - Should the March 1990 regulation which allows any retail outlet with a retail sales area under 4,000 square feet to open on Sunday be repealed?

The Committee received a total of 142 presentations that addressed this issue. Of that number, 130 called for the repeal of the regulation while 12 were in favour of its retention.

Support for Repeal of March 1990 Regulation

Those who wish to have the March 1990 regulation repealed cited a number of reasons. Those reasons include:

(a) the lack of economic benefit;

(b) the strain on families and the Nova Scotia way of life;

(c) the lack of protection for workers;

(d) the potential for a legal challenge that may result in wide open Sunday shopping;

(e) the need for additional support services;

(f) the potential decline in customer service; and

(g) the lack of support for Sunday shopping from within the retail industry in Nova Scotia.

The following are excerpts from various presentations supporting the repeal of the March 1990 regulation:

(a) **the lack of economic benefit.**

Rick Clarke, President, N. S. Federation of Labour, quoted Ms. Lynn Arling, President of the Alberta Division of the Canadian Consumers' Association from a presentation made in 1988:

> "Alberta's experiment for the past ten years has made everyone unhappy; employers, store staff and consumers. The dollar value of sales in Alberta has not increased while stores have additional costs of lighting, heating, advertising, job training and shoplifting. People can sell more for a while, but soon the well dries up. People's wages don't change."

George Vasil, Chairman, The Nova Scotia Canadian Tire Dealers' Association:

"In Ontario where wide open Sunday shopping has been in effect since the summer, retail sales declined in September 1.8%, the same percent decline as in Nova Scotia. A major retail analyst in Toronto is quoted as saying:

'What has happened in effect is that six day's worth of retail sales have been spread over seven'"

Heather Patterson, Manager, Marks and Spencer, Sydney:

"Sunday openings will be putting a great strain on retailers. Contrary to some beliefs, there is no magic supply of money waiting to be let loose on the one day people can't spend it now. The strain will come from increased operating costs created by this law. No new jobs will be created, hours will be given to current staff, whom I might add, are opposed to working on Sunday; and in some cases have said they won't work.

Heather Patterson Cont'd

The scenario we face is increased costs with the same revenue...being generated. That goes against the grain of any business philosophy I've been taught."

Don Regier, Store Manager, Sears, Halifax:

"The introduction of open Sunday shopping will not increase the total amount of disposable income available to be spent on general merchandise. Therefore, there will be no economic gain but merely a shift in balance of sales by day."

Tim Dietrich, Area Manager (Nova Scotia) Home Hardware Stores Ltd.:

"If wide open Sunday shopping does occur in the future, consumer spending will remain the same. Retail revenues will simply be redistributed among communities and retailers. Since retail spending will remain the same, employee and management hours will simply be

Tim Dietrich Cont'd

spread over seven days rather than six. If retailers are unable to hold these expenses currently spread over six days they will be passed on to the consumer."

Peter O'Brien, Director, Provincial Affairs for Atlantic Canada, Canadian Federation of Independent Business:

"The economics of opening seven days a week should be obvious to everyone. There are only so many consumer dollars and after purchases for the necessities there is only a limited number of discretionary dollars left for retail purchase. Longer hours, extra days will not expand the total purchase from individuals. Rather, it will spread the purchasing out over the extended period of time. The impact of this is higher overheads, lower margins, and as a result higher prices to consumers. In other words, the bottom line is that extended store hours will have a negative impact for many firms in Nova Scotia. Increased costs

Peter O'Brien Cont'd

caused by longer hours will impact negatively on retail merchants and the resulting increased prices will have a negative impact on consumer spending."

Carol MacDonald, Coalition Against Open Sunday Shopping:

"The economics of Sunday shopping cannot be justified by persons who suggest that costs do not change if stores are open seven days a week. There is immediately the increased costs of wages and of such overhead items as electricity, heating, snow removal, security, parking and the like, which will impact directly on the cost of merchandise. Nowhere in Canada can it be demonstrated that purchases were expanded because of Sunday store hour openings. Instead it is obvious that in Ontario, where many stores which had opened and are now closed on Sundays, that the extension of store hours expanded overheads and therefore significantly reduced profits."

Phil Landry, President, Port Hawkesbury Chamber of Commerce and Manager of Peoples Department Store, Port Hawkesbury:

> "Sunday shopping does not bring additional disposable income to the consumer and we are spreading six days of business over seven days. It is a no win situation. Increased costs to retailers are not offset by increased sales. Customers could be forced to pay higher prices for their goods as costs rise to sell these goods. Staff morale deteriorates in the workplace, with the result - additional cost."

Globe and Mail, November 14, 1990 Headline "Retail Sales Sluggish - Sunday Shopping Failed to Spur Ontario Results" by Kenneth Kidd, Retailing Reporter:

> "Business at Canadian department stores was dismal for the sixth consecutive month in September, amidst signs that Sunday shopping has been no great boon to sales in Ontario. Statistics Canada said yesterday that department store sales...were up only 0.6% from a year earlier."

Peter Gow, Owner, Gow's Home Hardware, Bridgewater, N. S.

"Opening Sundays would result in higher retail prices due to increased overhead (increased utilities, wages, advertising). The C.R.H.A. (Canadian Retail Hardware Association) tells us from their experience in Western Canada that there has been little increase in sales. Obviously this results in higher prices to the consumer."

William Vervoort, Canadian Tire Dealer, Bridgewater, N.S.:

"For many years I owned five stores in Victoria, B. C. and we were open seven days per week, not by choice, but since the competition was open we had to follow suit. In order to attract enough customers on Sunday, we had to put on specials thus reducing the gross margin, which in turn resulted in higher prices for regular goods to the consumer."

(b) **the strain on families and the Nova Scotia way of life .**

Tim Dietrich, Area Manager (Nova Scotia) Home Hardware Stores Limited:

"The issue of Sunday shopping is an issue of lifestyles and family values. Retailers and their staff want a common day of rest with their families. Some of our stores are open for more than eighty hours per week in most communities. Ample time is available for most consumers to shop during present store hours."

Harry C. Pridham, President, Pridham's Studio Limited:

"Our staff has been polled and they do not want to work Sundays! They refused!

Sunday is now the only day you can get together with family and friends. In many families two parents would be working at different times; when could a family unit get together? It is an erosion of family life if Sunday shopping comes to Nova Scotia."

Charles Harrison, Harrison's Home Care and Member, Atlantic Building Supply Dealers' Association":

"...Sunday shopping will erode the quality of life in the Province. It will mean the loss of the all-important 'family day' - a common pause day when people can spend time with their families and friends. The erosion of quality family time will result in a negative impact on the family as a cornerstone of society...most retail employees already work Saturday due to business demand. Sunday shopping could keep them in the workplace as well. Days off would fall throughout the week when school children are in school. When can families spend time together?"

Eugene M. Thompson, Executive Minister, United Baptist Convention of the Atlantic Provinces:

"Our chief concern is for the welfare of families, whether they attend church or not. In a busy, complex society the time people have with their families has become increasingly difficult to protect. If increasing pressure is put upon our homes through lack of a common day of rest, society as a whole will suffer.

Eugene M. Thompson Cont'd

It is our observation that many in the retail sector are not in favour of broadened Sunday openings and we give our support to their concerns. As more stores are opened on Sunday family life for people in the retail sector will become more fragmented."

Blair Douglas, Past President, Canadian Retail Hardware Association and Hardware Retailer:

"For our members, their employees and their families, the issue is not Sunday shopping - it is Sunday working. In the absence of effective provincial legislation, people in our industry will be forced to work seven days a week. One can imagine the impact on family life in the province.

Alberta and British Columbia, the two Canadian Provinces which have virtually wide open Sunday shopping except in some smaller communities, have the highest divorce rates in the Country. While we are not suggesting that there is a

Blair Douglas Cont'd

direct relationship between Sunday shopping and divorce - no one is going to convince us that Sunday retailing enhances the quality of family life."

Don Regier, Store Manager, Sears Canada, Halifax:

"Each and every year, with increasing numbers and enthusiasm, the citizens of Nova Scotia celebrate their traditions and rich heritage. We believe that 'open for business' seven days a week will result in a serious erosion of those traditions and values. Laws of the land need to reflect the values and traditions of the people, and the March 13th amendment has gone beyond the wishes of a majority of our citizens. It furthermore could result in wide open Sunday shopping, adversely affecting the quality of life employees and their families could enjoy."

Jack Langlois, Chairman of the Retail Committee of the Pictou County Chamber of Commerce and Retail Merchant:

"With the changing social norm, commonplace

Jack Langlois Cont'd

are single parents or two working parents, and most often the only time to spend as a family unit is on Sundays. If we force people to work on Sundays there will be less and less time spent as a family. Sunday is a time for family, and religion, not for shopping. Today's busy family needs more time spent as a family and we should not be forcing people away from their families."

Rev. George Barrett, President of the Stellarton Ministerial Association:

"We believe that our common day of rest also affirms the values that are part and parcel of our society. At present, economic interests tend to dominate our society. We can't underestimate the importance of a strong economic society but we need to be helped to see that wealth and commercial success in themselves are not necessarily the keys to happiness and a good society. We have seen too many individuals, families and nations crumble when their material prosperity was the greatest.

Rev. George Barrett Cont'd

The move to permit open shopping on Sunday seems, to us, to reflect this emphasis on material prosperity. It is our belief that in limiting commercial activity on Sunday we are, in effect, saying we value people as more than cogs in the production process. Life is comprised of more than efficiency and profit making. We are saying that life goes beyond economic considerations."

Jennifer MacDonald, General Manager, Industrial Cape Breton Board of Trade:

"The Industrial Cape Breton Board of Trade would like the Province of Nova Scotia to know the majority of business people on the Island are not in favour of Sunday shopping. The 'day of rest' is important and not only because of religious beliefs, but also because of the need in this day and age to enhance family life, not destroy it."

Heather Patterson, Manager, Marks and Spencer, Sydney:

"Let me speak from a personal perspective and tell you about my other full-time job. I have two small boys, seven and five, and I treasure my one true day off, that being Sunday. This day is totally devoted to them. Yes, many people do work on Sundays, including my husband, who works in a power generating station. This is another reason why it is important to have that day off with my children.

Ladies and gentlemen, we all depend on N.S.P.C. to provide us with electricity, but do we really need a new blouse or pair of shoes we can buy during the 72 hour week of business operation?"

Rev. Clyde N. Slauenwhite, President, Bridgewater Ministerial Association:

"In our pastoral work we see the negative effects of the stress already placed on families by necessary shift work in factories, essential services and small business that are already open on Sunday. Any further stress contributed to by further fragmentation of the family on their one free day will only increase the marital, emotional and physical ills of the day. This, in turn, has its price not only in human suffering but in tax dollars by way of increased workload on various social services."

Peter Gow, Owner, Gow's Home Hardware, Bridgewater, N.S.:

"Although employees may get another day off during the week, they will not see their children at all on weekends when they are off from school. The Sunday afternoon drive with our families may become a thing of the past. The social gatherings, sporting activities and the weekend fishing and camping trip may all be something we can only wish for."

Marilyn Crook, South Shore Labour Council:

"Another, no less serious, effect of Sunday working is the loss of volunteers to the community. Many workers donate much of their time to community organizations. These include firefighters, minor hockey, little league, scouts, guides and church groups. The loss of Sunday as a day of rest or a day for family activities may result in a great many volunteers reconsidering their commitment to these activities. To many valuable organizations the loss of one or two active volunteers may mean the end or certainly a large drop in effectiveness.

Probably the group that will be most effected by wide spread Sunday working is the family. During difficult economic times...two-income families are very common. With one family wage earner working Sunday and one working through the week and children attending school, there will simply be no time left for the family.

Marilyn Crook Cont'd

Our society was built on and became strong because it was based on commitment to family and community. We must not allow this basic foundation to be further eroded by the desire of a few for higher profits."

Mayor Dorine Taylor, Kentville:

"The lifestyle of Valley residents is one which strongly supports family values and we emphasize that there must be one day a week when families can share time together. The present legislation disrupts or has the ability of disrupting that opportunity and privilege."

Doug Hageman, Atlantic Baptist Convention:

"We are paying the price in our society of too little time for those things that are of greatest worth to our personal lives, the welfare of our families and to our relationships.

Doug Hageman Cont'd

The increased stresses and pressures of our society are adding to the decay of the family and family relationships. Family violence and abuse are at an alarming level. We must do all we can to reduce the stresses that contribute to family deterioration.

People need a day of rest, and families need time for refreshing and family activities. There is every reason to argue for a day which the overwhelming majority would find acceptable as a pause day from the normal activities of the week."

(c) **the lack of protection for workers.**

Rev. Michelle Smith, Maritime Conference, United Church of Canada:

> "As a Church which represents thousands of Nova Scotians we feel confident in the fact that people of this province do not want to lose their day of rest. The folks who are directly effected by this proposal are the ones who are powerless to change it or oppose being called in to work on what has become society's day of rest. Namely, clerks in the retail outlets in our towns and cities, who are without the power of a union to ensure fair treatment."

Marilyn Crook, South Shore Labour Council:

> "Retail workers on the South Shore are, with a few exceptions, unorganized and are vulnerable to abuse by employers forced to remain open to compete with larger operations. The nature of the retail industry and competitive forces

Marilyn Crook Cont'd

created by those who best exploit their workers may lead to a 'retail job ghetto'. This we feel can never be in the best interests of Nova Scotia's society."

Eric W. Frank, President, Kent Co-opertive Ltd.:

"Totally apart from any religious or economic considerations, the co-ops see this as a social issue. A simple case of exploitation of workers. As you must realize a very large proportion of retail service workers are employed part time and are therefore not protected in any way from the whims of their employers."

(d) **the potential for a legal challenge that may result in wide open Sunday shopping.**

John Ward, Executive Director, Atlantic Building Supply Dealers' Association:

> "The fairness of the decision by Order-in-Council March 13th to allow stores not in excess of 4,000 square feet to open, and force those over 4,000 square feet to close must be questioned. This decision, we feel, will certainly be challenged with the result being wide open Sunday shopping for all retailers."

Dan Landry, Vice-president and Operations Manager, Dartmouth Building Supply:

> "It is our belief that a decision to allow stores up to 4,000 square feet or less to open, and to force larger stores to close will be challenged in court. The end result will be wide open Sunday shopping."

Don Regier, Store Manager, Sears, Halifax:

"We believe it is only a matter of time before the legality of the 4,000 square foot rule is challenged - that it appears to discriminate against businesses over 4,000 square feet. This challenge could easily result in wide open Sunday shopping throughout the Province."

John Holm, M.L.A. Sackville, Consumer Affairs Critic, Nova Scotia New Democratic Party:

"The change in regulations also makes the Uniform Retail hours law more likely to be struck down as unreasonably discriminatory against stores with more than 4,000 square feet of retail space - the only ones unable to open. They could well win a court case by asking what public policy justification is left for any restrictions, when most stores are allowed to open on Sunday as long as municipal bylaws permit?"

George Vasil, Chairman, Nova Scotia Canadian Tire Dealers' Association:

- "Larger businesses will now start to feel reducing market share and apply pressure to government to remove what is, at best, an arbitrary condition (retail space not to exceed 4,000 square feet) to allow them to reclaim their share. What we have here is the domino theory in full bloom. Full Sunday shopping will thus become a reality."

(e) **the need for additional support services.**

Charles Harrison, Harrison's Home Care, Atlantic Building Supply Dealers' Association:

> "Sunday shopping could result in higher property taxes and provincial taxes due to an increased demand for government services. If Sunday is a normal retail day there will be an increased demand for public transit, hospital services, as well as police, fire and garbage disposal. The taxpayer will ultimately pay for the increased demand for government services which will be inevitable, if there is wide open Sunday shopping."

Carol MacDonald, Coalition Against Open Sunday Shopping:

> "Retail employees, because most retail establishments in Nova Scotia are open more than sixty-five hours a week, already miss many family events and activities by being required

Carol MacDonald Cont'd

to work evenings and Saturdays. This would certainly be compounded if stores were to be open on Sunday as well. Services for these employees including day care and public transportation would be required which would have an impact on provincial and municipal budgets."

Blair Douglas, Past President, The Canadian Retail Hardware Association and Hardware Retailer:

"Property and provincial taxes may very well have to increase to accommodate wide open Sunday shopping. All of the normal services provided by businesses and the different levels of government would have to be available for a full seven days a week."

Don Regier, Store Manager, Sears, Halifax:

"We believe if Sunday shopping became widespread, it would quickly impact on other businesses that supply goods and services to retailers. You have heard the 'ripple effect' theory too, but let us add our voice to the fact that as Sunday shopping becomes a way of life, requirements for additional transit, daycare, banking, and delivery, just to name a few, will increase; until it is conceivable that Sunday will become just like any other day of the week. Where will it end?"

(f) **the potential decline in customer service.**

George Vasil, Chairman, Nova Scotia Canadian Tire Dealers' Association:

> "We do not know just how difficult it will be to recruit part-time staff to work on Sundays; we do know that full-time, experienced staff is very reticent to do so. This lack of qualified staff will cause productivity to decrease and customer dissatisfaction to increase."

John Ward, Executive Director, Atlantic Building Supply Dealers' Association:

> "It is a virtual impossibility to find qualified, competent, part-time employees for such a technical retail industry. We submit that the public needs are better and more efficiently met by highly trained full-time staff."

William Vervoort, Canadian Tire Dealer, Bridgewater, N. S.:

"Customers are looking for service and the main complaint we are hearing from customers is that they cannot find anyone in the store to serve them. In my particular business we employ very few part-time people for the simple reason that if you want to give good customer service you have to have very knowledgeable people. Part-time people, as a rule, cannot be expected to have that knowledge yet with Sunday opening you will find that stores by necessity will operate with students or part-time people. As a result the consumers are not getting the service they are entitled to or expect."

(g) **the lack of support for Sunday shopping from within the retail industry in Nova Scotia.**

Richard Provencher, Manager, Truro Development Corporation Ltd.:

> "Sunday is a special day to a majority of all persons not working and the merchants of downtown Truro do not support Sunday shopping."

Allen Johnson, Member, Atlantic Building Supply Dealers' Association:

> "The passing, by Order-in-Council, on March 13th of amendments to the Uniform Closing Day Act is a substantial concern to our businesses, our employees and their families.
>
> The typical Nova Scotia Building Supply dealer is a retailer who is open six days a week and works ten to twelve hour days. It should be pointed out that the majority of these stores

Allen Johnson Cont'd

are 'family' stores which require the presence of the owner/manager most hours that the store is open.

We are opposed to an extension of shopping hours through Sunday shopping or seven days of work.

I can assure (the Committee' that the Nova Scotia businesses represented by this submission are concerned about our customers. Without them there would be no businesses or jobs for our employees. However, we are also very concerned about our people and their right to enjoy a common day of rest."

darry C. Pridham, President, Pridham's Studio Ltd.:

"Our staff has been polled and they to not want to work Sundays! They refuse! Sunday is now the only day you can get together with family and friends."

Dan Landry, Vice-President, and Operations Manager Dartmouth Building Supply Ltd.:

"Our industry requires a high degree of customer service. Further extension of hours will only put increasing pressure on retailers to increase the number of part-time employees at the expense of the full-time employees. Many of our employees would suffer great inconveniences if our stores were open on Sunday.

I have done a poll of our 246 employees to determine if they are willing to work on Sundays. All 246 said no."

Peter O'Brien, Director, Provincial Affairs for Atlantic Canada, Canadian Federation of Independent Business:

"More than 1,500 of our member firms in Nova Scotia are in the retail or service sector and the impact of open Sunday hours would be felt by those businesses more than by any other at the outset.

Peter O'Brien Cont'd

There has been public debate on this issue since April 1990 and as C.F.I.B. spokesperson for this region, we have been very much in the public view while stating our opposition to the extension of store hours to Sundays. I can state emphatically that not one of our members from across Nova Scotia has contacted our office to indicate their support for Sunday shopping or to indicate their disagreement with our stated opposition."

Blair Douglas, Past President, Canadian Retail Hardware Association and Hardware Retailer:

"Our members want to remain closed on Sundays. Surveys of our retailers in Nova Scotia show that more than 95% are opposed to Sunday and holiday retailing and that no provincial issue is of more concern to our dealers.

Wide open Sunday shopping in the Province ultimately means for our members and their employees, that they are forced to work seven days a week. This is not a free choice, it

Blair Douglas Cont'd

is an economic necessity forced upon them by competition. Who loses with Sunday shopping? Retail store owners, their employees and their families are the big losers. Workers who support retailing also lose. Small businesses, which are family owned and operated, will never get time off."

Don Regier, Store Manager, Sears, Halifax:

"We have consistently been opposed to wide open Sunday shopping other than for essential goods and services and strongly in favour of a provincially regulated common pause day.

As Canada's largest single general merchandise retailer, we operate five retail department stores and approximately one hundred catalogue selling units in Nova Scotia. We employ approximately 2,500 Nova Scotians in either a full or part-time capacity.

Don Regier Cont'd

Sears Canada sees that there is nothing to gain by opening Sundays and our employees have everything to lose if we are forced to do so."

Bob Bona, Scotian Homes, Enfield:

"I have 36 full-time employees. None of them are in favour of opening on Sunday. Sunday is a family day and we are definitely against Sunday openings."

Jack Langlois, Chairman, Retail Committee, Pictou County Chamber of Commerce, and Retail Merchant:

"The finding of our Committee is that a majority of the merchants in Pictou County and surrounding areas are not in favour of store openings on

George Vasil, Chairman, Nova Scotian Canadian Tire Dealers' Association:

"Our Association represents the 20 Canandian Tire Stores in the Province of Nova Scotia which are owned and operated by individuals who live and work in their communities.

Having discussed Sunday openings with the people who work with me, please let me assure this Commission, that there is no support among them for Sunday shopping.

We, who work in the retail industry, do not perceive any improvement in the economy of Nova Scotia due to Sunday shopping.

We, who work in the retail industry, can foresee a negative impact on the quality of life due to Sunday shopping.

We, who work in the retail industry, do not want Sunday shopping."

Canadian Tire Employees, New Glasgow:

"The undersigned employees of Canadian Tire, New Glasgow wish to register their objection to non-essential Sunday shopping." (The petition carried 70 signatures.)

Paul Perry, Co-ordinator, Business Improvement District Commission, North Sydney:

"A uniform day of closing is viewed by a great deal of the business community as a vital link to their survival. Most downtown businesses are family operations where the husband and wife work six days per week to keep their business open. They look forward to that one day per week where they can relax and be with their families, and prepare for another week of coping with the many pressures they face.

The North Sydney Business Improvement District Commission and its member businesses are against the present exemptions to the Uniform Day of Closing Act and we ask that you take the necessary steps to have the legislation brought back into force that existed before the changes took place."

Judy Demone, Employee, Gow's Home Hardware, Bridgewater, N.S.:

"I am here with my fellow employees from Gow's Home Hardware to voice our opposition to Sunday openings. I did a poll at the Mall and in a matter of three hours I collected 320 signatures of people not in favour of Sunday shopping and only 4 in favour. I can assure the Committee that the staff are not interested in working on Sunday. We have families and we need our time with them."

Support for Retention of the March 1990 Regulation

Of the 142 presentations the Consultation Committee received with regard to the March 1990 regulation, 12 presentations supported that regulation.

The reasons cited for that support include:

(a) consumer convenience;

(b) support for the tourism industry;

(c) support for the principle of free enterprise and the free choice of retailers; and

(d) the inevitability of Sunday shopping in Nova Scotia.

The following are some of the comments made in support of these points.

(a) **consumer convenience.**

Public Hearing - Truro

A person pointed out that there are a number of circumstances that do not allow people to get their shopping done from Monday to Saturday and it is a great convenience to have stores open on Sunday. If people don't want or need to shop on Sunday, they can stay home, this person noted.

Another person in Truro shared that view and considered it to be very convenient to have stores open on Sunday.

Public Hearing - Halifax

A person spoke to the Committee in support of the consumer convenience element of Sunday shopping. They pointed out that many people work odd hours and shifts and having stores available for shopping on Sunday is very advantageous to them.

This view was shared by another person in Halifax who expressed the same feeling.

Correspondence

The Sunday Shopping Committee received a letter from a person in Amherst who cited the needs of the public with regard to the convenience of Sunday shopping. They noted that "to have Saturday and Sunday available for shopping would be a great advantage to the public".

(b) **support for the tourism industry**

Ron Lane, President, Tourism Industry Association of Nova Scotia:

"Just about every study of tourism potential, the opportunity for shopping or the lack of it, is identified as a significant factor. Shopping is a major vacation activity. Nova Scotia is making inroads into the cruise ship trade. This is a high-growth area of global tourism.

A major problem in Nova Scotia is that of a cruise ship. A load of passengers that land in one of our ports on Sunday faces a closed down community. Not only is it lost business opportunity but poor hospitality. It limits our potential.

As with cruise ships, communities plan major festivals and events that draw large numbers of people onto their streets. Frequently, this is over a weekend. Public and private sector

Ron Lane Cont'd

funds are spent to attract these visitors. Then we turn our backs on the opportunity to provide retail services to obtain economic benefit from our promotion by selling to people who want to buy. If a business decided to open on Sunday for a cruise ship or a festival it might well be against the law."

Don Wilson, South Shore Tourism Association:

"A very important activity for the tourist is shopping. It is a well-known statistic that 7% of every tourist dollar goes to retail, that is shops and stores.

We need a ruling in favour of Sunday shopping. It's not okay to only buy gas, buy a meal, visit a museum, play bingo, buy accommodation and not be able to shop.

Our mandate in the tourism industry is service. Our visitors come from around the world and they expect certain things when on vacation.

Don Wilson Cont'd

We are there to meet that need and give the service that the visitor wants and there is no question they want to shop. We don't want to tell them 'not today'."

Barry MacGregor, Yarmouth County Tourist Association:

"Visitors arriving in Nova Scotia or on their day of departure, finding fewer opportunities to shop than presently available begin to question our position as a destination for tourists. Indeed we are currently criticized quite often for a lack of commercial services on a Sunday. Increasing restrictions of having more commercial operations closed, simply sends out the wrong signal to visitors who provide the revenue to one of our major industries.

The Yarmouth County Tourist Association agrees with the existing law and encourages the Province of Nova Scotia to keep Sunday shopping legislation as it is."

(c) support for the principle of free enterprise and the free choice of retailers.

Ron Lane, President, Tourism Industry Association of Nova Scotia:

> "Businesses may make a decision that they do not want to be open on Sunday. They should not attempt to impose their values or choice on others. Employees may make a personal choice that they will not work on Sunday. This may be worked out between employer and employee in most cases. There may be a time that it cannot. It is the role of government to intervene on the occasions when this occurs."

Retailer, Halifax:

> "People have a right to work when they want to. We live in a free enterprise system. Retailers should not be hamstrung on the hours of operation."

Private Citizen, Sydney:

This person expressed the view that they are in favour of an open free enterprise system. They are against the government being overly involved in the retail business.

Don Wilson, South Shore Tourism Association:

"We need the unrestricted right to market our product and that is why the people making a living in the tourism industry are asking you to let them 'mind their own business'. We want stores to stay open as the market demands.

Let the marketplace decide - the rule of supply and demand. If the demand does not exist, the shops will close."

Retailer, Kentville:

This person expressed the opinion that the square footage law is arbitrary and unfair. They stressed the 'freedom of choice'. Let consumers decide, they said, let the market decide.

Retailer, Bedford: (in a letter to the Committee Chairman)

> "As the economic situation is becoming more difficult, businesses need more flexibility to succeed, and I would strongly urge your Committee to leave the matter alone for there is no problem with the present situation."

(d) **the inevitability of Sunday shopping in Nova Scotia.**

Ron Lane, President, Tourism Industry of Nova Scotia:

> "We should be aware of the greater access to weekend shopping, close by across the border. Factory outlets along major highways thrive and depend on the weekend trade for their survival. Canadians charter busses to take weekend shopping trips into these areas. Access to Sunday shopping has recently been confirmed by a majority vote and plebiscite in the State of Maine."

Private Citizen, Truro:

This person expressed the view that Sunday shopping is inevitable. It is a North American trend. This person asked, "Why fight the inevitable?" Instead it was suggested we spend time working toward the proper implementation of Sunday shopping by creating a business climate in which businesses could prosper. This person said "Sunday shopping is here to stay".

FINDINGS:

(a) **Economics**

The Committee did not find any discernible economic benefit associated with Sunday shopping. The evidence presented from the experience in Western Canada and Ontario supports the logic that with a limited number of consumer dollars available to the retail industry, Sunday store openings would simply raise retailers' costs without increasing revenues. This situation would result in higher prices to consumers and no increased tax revenue to the Province.

The Committee also accepts the logic that if Sunday shopping is allowed to continue unchecked and a small number of retailers open, their competitors will be forced to follow suit in order to protect their market share. This would mean that many retailers would be forced to be open against their will. The Committee also has grave concerns that this situation would force the bankruptcy of many small to medium-sized businesses in Nova Scotia which would be unable

to withstand the economic losses involved, while their national or international competitors would be able to do so in order to protect or even increase their market shares.

(b) **Quality of life**

The Committee accepts and endorses the assertion that the preservation our way of life in Nova Scotia; our quality of life in Nova Scotia; family time; and a time for rest and rejuvenation are absolutely necessary for our well-being. The Committee believes that these would all suffer dramatically with Sunday shopping beyond essential goods and services.

The Committee also noted that, as a general rule, presentations from the clergy and religious interests, while naturally speaking of people's need for time to worship, more often than not stressed those very same points of rest and rejuvenation and family time, not just the Sunday worship time aspect.

The Committee did not encounter any significant difference in attitude between management and labour on the "quality of life" aspects of this

issue. Both groups heartily endorsed the need for a common day of rest - a common day away from enterprise.

The Committee was impressed by the obvious genuine concern of the vast majority of management representatives in the retail industry in Nova Scotia for the well-being of their staff and their families. Management clearly recognized that their staff must have time for their families and themselves so as to return to work on Monday relaxed and prepared for another week's work.

(c) **Tourism**

It is the Committee's firm belief that the current exemptions provided for those in the tourism industry in Nova Scotia are very adequate.

Upon questioning by the Consultation Committee, tourism representatives and managers could not answer as to why some tourist oriented outlets were not already open on Sunday as currently allowed by the legislation.

As well, tourism representatives could not suggest to the Committee any essential tourist shopping needs that could not be met on a Sunday under the current legislation.

It is the Committee's impression, having travelled throughout the province, that the majority of tourist-related retail operators do not have a good understanding of the exemption already available to them in the current legislation.

The current exemption for tourist-related retail businesses is found in a regulation pursuant

to Section 3, subsection (2), clause (s) of the Act;

> "(c) a store in which the principal business is the sale of handcrafts, souvenirs and similar articles, principally to tourists and travellers;"

The Committee feels that this exemption is adequate to meet the needs of those retailers who sell principally to tourists. The Committee does not feel that broad-based, or wide-open Sunday shopping is necessary to foster increased tourist traffic in Nova Scotia.

The Committee acknowledges the fact that some Nova Scotians avail themselves of shopping opportunities in the State of Maine. However it is the Committee's belief that the attraction is not the availability of Sunday shopping, although that does play a small part. Instead, it is the significantly lower prices and the wider selection of goods, some of which are not available in Canada, that draw Canadians across the border into the United States to shop.

It is the Committee's strong feeling that so-called tourism zones or tourist designated areas with broader shopping allowances are undefinable, unmanageable and unenforceable.

(d) **Potential legal challenge**

The Committee accepts the argument that if the March 1990 regulation is not repealed then it will only be a matter of time before a legal challenge is brought forward by retailers above 4,000 square feet who see the regulation as arbitrary and discriminatory. The Committee is of the view that such a challenge has a very good chance of being successful which would create a situation allowing wide open Sunday shopping in Nova Scotia, which the Committee sees as very undesirable.

(f) **Potential decline in customer service**

The Committee accepts the assertion that Sunday shopping will increase the numbers of part-time employees, or at least the use of part-time employees, and that this will result in a reduction in customer service in the retail industry.

The Consultation Committee accepts the assertion that the quality of customer service available in the retail industry will suffer if Sunday shopping is allowed with inexperienced, part-time workers replacing the full-time staff in those situations.

(g) **Consumer convenience**

The Committee heard from some consumers who expressed a desire for Sunday shopping. The reasons they cited were convenience and "for something to do" on a Sunday.

While the Committee recognizes the convenience aspect of Sunday shopping, it feels that the current shopping hours provided from Monday to Saturday inclusive are generally sufficient to meet the needs of the vast majority of Nova Scotians.

(h) **Principle of free enterprise**

While the Committee accepts and endorses the principle of free enterprise, it does not believe this principle extends to the point which sees retailers being allowed to do anything, anytime and anywhere they wish. To assert that restrictions on Sunday shopping somehow restrict free enterprise is to ignore the regulations, licensing procedures, safety requirements and all the other constraints under which retailers currently and properly operate. The fact of the matter is that enterprise is not "free". The fact is that retailing in Nova Scotia is a regulated industry.

(i) **Belief in the inevitability of Sunday Shoppping**

The Committee does not accept the assertion that Sunday shopping is inevitable in Nova Scotia.

The Committee believes that while other areas in Canada and the United States may choose Sunday shopping, that in itself is hardly reason enough to follow suit, especially in light of the lack of evidence of economic or social benefits.

The overwhelming majority of Nova Scotians appearing before and corresponding with the Committee made it very clear that our way of life is far too precious to be allowed to be damaged simply because our geographical neighbours may think differently.

The Committee is of the view that with an increasingly complex world developing around us, the preservation of a common day of rest is in fact a progressive stand, not a regressive one.

(j) **Protection of workers**

The Committee accepts the viewpoint that when the March 1990 regulation was brought into effect there was nothing provided for the protection of workers who in some cases may be forced into working on Sunday. There was also no provision made for compensation or other labour standards considerations. The Committee feels these protections are essential if the retail industry in Nova Scotia was to expand to a seven-days-a-week situation.

(k) **Lack of support for Sunday shopping within the retail industry in Nova Scotia**

The Committee heard from a large number of retailers who said they were not in favour of Sunday openings. However, they would be forced to open in order to protect their market share, if their competitors began opening on Sunday.

The Consultation Committee, in virtually every presentation from retailers, employees and management alike, heard that there is no support for Sunday shopping from within the retail industry in Nova Scotia.

The Committee believes that the retail industry in Nova Scotia is virtually unanimous in its opposition to Sunday shopping. This fact must weigh very heavily on any decision made by government on this issue.

RECOMMENDATION

The Consultation Committee recommends that the Executive Council of the Province of Nova Scotia immediately repeal the March 1990 regulation made pursuant to the Retail Business Uniform Closing Day Act which allowed any retail outlet with a sales area of less than 4,000 square feet to open on Sunday except on Easter Sunday or when Canada Day, Christmas Day, Boxing Day or New Year's Day falls on a Sunday.

ISSUE #2 - Does the lack of restrictions on the size and product mix of drugstores give them an unfair advantage over competitors outside the health care field?

The following are examples of presentations received by the Committee which assert that drugstores do enjoy an advantage over competitors outside the health care field due to the lack of restrictions upon their operations.

Richard Provencher, Manager, Truro Development Corporation Limited:

> "A drugstore should not pretend to be a drugstore if it intends to be a grocery store, a video or hardware store."

Sherry Porter, Regional Director, Canadian Council of Grocery Distributors:

"Drugstores have become multi-product retailers. They compete directly with food store and other types of retail business. This competitive advantage is the direct result of the Uniform Closing Act, which allows drugstores to open without restrictions on Sunday, to openly advertise Sunday shopping and to advertise a wide variety of products, above and beyond health care products.

The latest annual report of one of the larger drug chains noted that less than 18% of their sales come from drugs and their 'drugstore operations'. One of the chains is now referring to itself as a 'food basket' in its advertising."

Rene Quigley, Bakery, Confectionery and Tobacco Workers:

In his presentation to the Committee, Mr. Quigley stated his belief that the lack of restrictions on drugstores and their expanding product mix did present a problem to those who are selling similar products but are not allowed to be open on Sunday because of their store size and therefore cannot compete directly with the drugstores on that day.

Fred Wade, Wade Enterprises, Kentville:

Speaking to the Committee, Mr. Wade declared that there should be some kind of limit placed on drugstores. This could be either a limit on the retail sales area or the type of products a drugstore would be allowed to sell.

Herman Nathanson, President, Nathanson Ladies Wear Ltd., Sydney:

"A serious point of frustration is that large so-called drugstores are permitted to be open Sundays selling various merchandise which makes up more than 60% of their floor space and has nothing to do with pharmaceutical items. In fact, it is reported in some studies that the actual drugstore sales from pharmaceutical items are only about 18% of sales.

I realize the importance of drugstores to health, to the sick and to invalids that require needy items. However, there is no excuse to be offered by the operators of Shoppers Drug and Lawton's Drug to see that only pharmaceutical items are available on Sunday. They hide behind the facade of a drugstore.

Herman Nathanson Cont'd

Competition is something that confronts all of us in one way or another...However rules of the game must be consistent and fair to all. Not to give the edge to unfair play."

Morton Frankland, M. W. Frankland Ltd., Weymouth:

(Mr. Frankland included several photocopies of drugstore advertisements with his letter to the Committee.)

"As an operator of a grocery store I feel that this photocopy is an example of things that are unfair to stores that are required to close. I do not support Sunday opening but something should be done about drugstores. They say they can't stop shoppers from buying pop while they are shopping for prescriptions. This type of ad suggests they have no intention of trying. Consider the very real and I feel, very unfair competition given grocery operators by major drugstores."

Atlantic Wholesalers Ltd., represented by Peter McDonough of McInnes, Cooper and Robertson:

"Atlantic's major concern over the present legislation relates to the fairness of competition between their outlets and those of certain so-called 'drugstores'.

It is felt that presently certain of these drugstores enjoy a huge competitive advantage under the existing wording in the Act.

We all understand and appreciate the need for having drugstores open on Sunday. People get sick and need prescriptions 24 hours a day, 7 days a week. However the type of drugstores we are concerned about are not the type we feel fit within the 'spirit' of the Act.

If there is no change, it will only result in enticing even larger stores of this type into the market. This will only add to the competitive disadvantage of existing grocery operations and eventually lead to the closure of smaller outlets that can no longer compete."

The following are examples of presentations received by the committee which assert that drugstores do not exploit any competitive advantage despite the lack of restriction upon their operations:

Bob Yorston, Executive Vice-President, Atlantic Region Shoppers Drug Mart:

> "I am here today to ask you to maintain the status quo with respect to the pharmacy exemptions and not to take any action to restrict access to this important health care service.
>
> Sale of food represents less than 1% of our total Sunday sales. So I respectfully submit, you can see that we do not compete with the food retailers in this category of goods.
>
> Residents of Nova Scotia are well served under the provisions for pharmacies in the existing Act. Any restrictions such as size limitation would jeopardize this availability of pharmacy service on a Sunday or public holiday."

(It should be noted that Shoppers Drug pharmacists made presentations to the Consultation Committee in Halifax, New Glasgow, Port Hawkesbury, Sydney and Yarmouth. These presentations were fundamentally the same, stressing the provision of health care and prescriptions services seven days a week.)

Daniel McKeough, President, Pharmacy Association of Nova Scotia:

"In addition to the need for every day accessibility to the dispensary for prescription services, there is a public trend towards self treatment (the use of over-the-counter products found at the front of the pharmacy) and pharmacists are spending more time counselling patients on the use of these non-prescriptions medications. Pharmacists are ideally positioned because of their accessibility and expertise to improve the patient's understanding of why, when and how drugs should be used.

It is the Association's recommendation that an Act Respecting the Uniform Closing Day for

Daniel McKeough Cont'd

> Retail Business remain unchanged or if the Act were to be changed that the operation of a drugstore continue to be exempt from said Act and that no restrictions be placed on the size of the retail pharmacy regarding exemption from the Act or on the merchandise mix available for sale in the retail pharmacy."

In a subsequent letter to the Consultation Committee Mr. McKeough noted that "in the overall spectrum of food sales in Nova Scotia, that portions sold by retail pharmacies would amount to a drop in the ocean."

The following is part of a presentation made to the Consultation Committee in Yarmouth on behalf of Shopper's Drug Mart.

Aubrey Brown, Vice-President Professional Development; **Arthur Konviser**, Senior Vice-President Corporate Affairs; **Bob Yorston**, Executive Vice-President Atlantic Region; and **Julie Carruthers**, Shopper's Drug Mart Pharmacist, Digby.

The Consultation Committee was presented with four options with regard to restricting the activities of drugstores. The first was termed the "roping off" alternative in which sections of the drugstore would be roped off or closed to the public on a Sunday. The difficulty noted with this option is that it is very hard to precisely define which products should be excluded from availability to customers on a Sunday.

The second option suggested was to limit the number of employees in a pharmacy on a Sunday. The difficulties noted with this option include inconveniences to sick patients; it places the health

care delivery process in danger because of strict limitations on the number of pharmacists; it would be difficult for the police to enforce; it compromises pharmacist's time to counsel patients; it causes stress for pharmacists; and it may increase incidents of shoplifting.

The third option dealt with curtailing the retail activities of pharmacies on Sunday by prohibiting advertising; special sales; and product promotions. The intention would be to eliminate any competitive advantage and would emphasize pharmacy and professional services.

The fourth option presented dealt with limiting the size of pharmacies. It was noted that in Ontario pharmacies are limited to 7,500 square feet while in New Brunswick that limit is 9,000 square feet. The presentation noted this option has the following advantages:

(a) It would limit products and merchandise carried in pharmacies.

(b) It would limit the number of employees by virtue of size.

(c) It would preclude pharmacies operating as quasi-food stores, convenience stores or discount general merchandise retailers.

As Mr. Yorston pointed out in his presentation;
"If too large pharmacies could expand product offering and sell a wide range of food products, apparel, toys, hard goods, soft goods, gardening supplies or other ancillary products.

If too small, pharmacies would not satisfy the dynamics of the marketplace, having regard to the number of products and stock keeping units.

Size must be a 'made in Nova Scotia' solution."

Don Kyte, Pharmasave Drugs (Atlantic) Ltd.:

"The drugstore industry is in a period of rapid change. Declining gross margins in the dispensary and rising operating costs are forcing storeowners to adapt by enlarging store sizes in an attempt to increase volume.

In the past five years, dispensary gross margins have declined 25%! To compensate, drugstore owners must continue to offer wide varieties of over-the-counter medications, and personal care products. Our suggestion is that since the current drugstore mix is essential for six days of operations, then access to all offered drugstore products should be unrestricted during the Sunday open hours.

In our opinion it would be severely restrictive and inappropriate to consider reduced access to any product category during the Sunday open hours. The cost of additional staff, security personnel, and the inconvenience to both pharmacy staff and customers would be unacceptable.

Don Kyte Cont'd

The current size restriction for stores that are not exempt from the Retail Business Closing Day Act is not a satisfactory benchmark for drugstores that offer Sunday service. As previously mentioned, out of economic necessity the size of drugstores has been increasing over the past ten years. Within our independent group of stores, sizes vary from area to area with the range being 2,500 square feet to 12,000 square feet."

FINDINGS

The Committee accepts the concerns of the grocery store, convenience store, and department store retailers with regard to the lack of restriction on the size and/or product mix of drugstores.

The Committee recognizes the investment made by drugstore operators in Nova Scotia through construction or lease of space, purchase of inventory, hiring of staff, etc.

The Committee also recognizes the community involvement of some of these retailers.

The Committee also recognizes the valuable services provided by drugstores with regard to prescription drugs and over-the-counter health care products on Sundays and holidays.

However, it is the view of the Committee that the spirit of the legislation with regard to drugstores

has been abandoned. In many cases drugstores have become mini-department stores whose product mix goes far beyond the traditional drugstore product mix and therefore violates the spirit of the Act in that it does not reflect the intention of the exemption.

RECOMMENDATION

The Committee recommends that the current exemption for drugstores contained in Section 3 (2) of the Act which reads;

> "(a) the operation of a drugstore except in a department store;"

be repealed and replaced with a clause reading:

> "(a) the operation of a drugstore except
>
> (i) in a department store; or
>
> (ii) where the retail sales area including the pharmacy but excluding patient counselling areas, medical applicance fitting areas, office space and storage space exceeds five thousand square feet defined either by a permanent structure or by a semi-permanent, movable, floor-to-ceiling, non-transparent barrier."

The Committee also recommends that drugstore operators be given a three year grace period in which to conform to this restriction.

The Committee feels that this three year period is necessary in order to avoid creating an undue hardship for drugstore operators who have been doing business within the letter of the law, if not the spirit.

The Committee feels strongly that this size restriction is needed to answer the valid concerns of those who currently suffer a competitive disadvantage due to the complete lack of restrictions on drugstore operations under the Retail Business Uniform Closing Day Act.

ISSUE #3 - Is 4,000 square feet of retail sales area too large a limit for a convenience store?

The following are examples of presentations to the Committee which indicate that the 4,000 square foot limit on a convenience store is too large.

Sherry Porter, Regional Director, Canadian Council of Grocery Distributors:

> "The 4,000 square foot maximum is too large. Members feel that 2,500 is a more reasonable level." (from a letter to Dr. Ellen McLean, Consultation Committee Member, October 23, 1990.)

On the other hand, the Committee heard from three convenience store operators in the Kentville area who, while operating stores well under the 4,000 square foot convenience store limit, did not voice any objection to that limit when asked by the Committee.

The Committee also received a written presentation from 5 Foodland Store operators. They are: Mike Carter, Canning; Arthur Canning, Caledonia; Dana Veinot, New Ross; Don Arsenault, Yarmouth; and Russell Tiller, Stewiacke. In their presentation they noted, "this presentation is made on behalf of (the aforementioned Foodland Store operators) who wish to have the Sunday Closing Act remain in the status quo position relative to grocery stores in the category of 4,000 square feet and under."

FINDINGS

Since this was mentioned only once in a letter to a Committee member by the Canadian Council of Grocery Distributors but not mentioned whatsoever in their formal presentation to the Committee, this is not seen as a major issue.

As well, the three convenience store operators who appeared before the Committee in Kentville expressed no difficulty with this size limit. Futhermore, the 5 Foodland operators who wrote to the Committee requested its preservation.

With these factors in mind, the Committee feels that no changes in the Act are warranted in this situation.

RECOMMENDATION

The Committee recommends that the current exemption provided by regulation pursuant to Section 3, subsection (2), clause (s) of the Act which reads;

> "(c) a local or convenience retail store, the primary purpose of which is the sale of groceries and operates at all times with a retail sales area not in excess of four thousand square feet;"

not be changed.

ISSUE #4 - Should "flea markets" be defined for the purposes of the Retail Business Uniform Closing Day Act and should that definition allow the sale of used clothing?

The Committee received a number of presentations indicating that the nature of so-called flea markets has changed dramatically in the past number of years. In some cases, they have evolved from a situation in which people were selling used items into one which sees distributors and wholesalers selling brand new, and in many cases still packaged items at discount prices. These distributors face an insignificant overhead in that they simply have to rent table space.

It was also pointed out to the Committee that there is no Provincial Tax collected and remitted for the sale of these items.

The Attorney General's Department received a complaint in 1989 from a retail merchant in a metro area shopping mall with regard to the flea market held there each Sunday. This person objected strongly to wholesalers

and distributors selling new merchandise identical to theirs. They pointed out that it was very unfair for the flea market vendor to be allowed to do this. The retailer had to incur all the standard overhead costs while the flea market vendor did not and was therefore able to offer the merchandise for considerable discounts in comparison to the regular prices. The lack of Provincial Tax collection on these items was also noted.

The Committee received a number of submissions requesting that used clothing outlets be allowed to open on Sunday.

The Consultation Committee perceives this question as one that takes on an almost cultural dimension. While a used clothing store operator in the metro area expressed an anti-Sunday shopping viewpoint, those throughout the so-called French Shore and in the South Shore region were strongly in favour of being allowed to operate on Sundays. They told the Committee about the way in which their businesses have become a very popular recreational activity on Sunday. Some examples include:

Len Smith, Smitty's Used Clothing, Saulnierville:

> Mr. Smith appealed to the Committee to provide some protection under the Uniform Closing Day Act for the sale of used clothing and secondhand items.

Arthur Young, Frenchy's, Branch LaHave:

Mr. Young pointed out to the Committee that he does approximately 25% of his weekly business on a Sunday. He requested protection under the Uniform Closing Day Act for the sale of used clothing and secondhand items.

Marion Hachenschmidt, Gerry's Used Clothing, Bridgewater:

Ms. Hachenschmidt related her experience of being closed by the R.C.M.P. to the Committee. She contended that it is absolutely necessary that she be open on Sunday in order to remain viable. She pointed out that her store is only approximately 1,800 square feet and she requested a specific exemption under the Retail Business Uniform Closing Day Act.

Ms. Hachenschmidt pointed out that people come to her store on Sunday for social reasons and that the very low prices are the main attraction.

FINDINGS

The Committee agrees with the assertion that flea markets have evolved into something not anticipated by or allowed for under the Act.

This is not acceptable in that those exploiting this situation enjoy a very unfair competitive advantage over retailers.

The Committee sees no harm in allowing used clothing stores to operate on Sunday and accepts the social and cultural arguments it heard supporting their exemption from the prohibitions of the Act.

RECOMMENDATION

The Committee recommends that the current exemption provided by regulation pursuant to Section 3, subsection (2) clause (s) of the Act that reads;

"(e) a flea market or rummage sale;"

be repealed and replaced with a clause that reads,

> "second hand outlets, such as flea markets, rummage sales and stores whose principal business is the sale of used clothing, used household goods, shopworn or damaged manufactured items, as well as handcrafts and home baked goods; but not including the sale of new manufactured items;".

ISSUE #5 - Should the Retail Business Uniform Closing Day Act contain a provision for those, who from conscience or religious practice, do not hold Sunday as the Sabbath or as their common day of rest?

FINDING

This legal issue arises from the argument that Sunday closing legislation infringes on the Freedom of Religion of those who observe a day other than Sunday as the Sabbath or day of rest. The Committee has had the opportunity to review all of the applicable legislation throughout various jurisdictions in Canada in addition to the most recent Supreme Court of Canada decision. It is clear to the Committee that our highest Court has indicated it is incumbent upon a legislature which enacts Sunday closing laws to attempt very seriously to alleviate the effects of those laws on people who choose to observe another day. A submission from the Seventh Day Adventist Church to the Committee suggested a draft amendment based on Prince Edward Island's Day of Rest Act. The draft proposal read as follows:

> "Section 3 (1) shall not be taken to prevent the operation of any retail business on Sunday by a person who, on the grounds of conscience or religion, closes his retail business for the same 24 consecutive hours each week on a day other than Sunday".

The Committee is not necessarily recommending adoption of this proposed amendment as is. However, the Committee feels that the above-mentioned proposed amendment attempts very seriously to alleviate the effects of those laws on people who choose to observe another day. This type of provision would appear to help alleviate a Charter of Rights challenge on the basis of an infringement of religious beliefs and in effect, would go a long way toward charterproofing the Retail Business Uniform Closing Day Act.

RECOMMENDATION

The Committee recommends that government consider amending the Retail Business Uniform Closing Day Act to include a clause which would prevent the Act from possibly infringing on the freedom of religion of those people who observe a day other than Sunday as the Sabbath or day of rest.

ISSUE #6 - What is the statutory reference for the separation of authority between the province and municipalities with regard to uniform closing days and hours of retail operation on those days?

FINDING

The Committee heard submissions on an important legal issue concerning Sunday shopping. It concerns whether there is conflicting authority between Section 99 of the Municipal Act and Section 4 of the Retail Business Uniform Closing Day Act. The Committee is of the view that this issue seems to be resolved from the brief one page legal opinion that has been provided to the Committee from the Attorney General's Department dated March 29, 1990.

RECOMMENDATION

The Committee recommends that a more in-depth legal analysis be done to ensure that there is no overlapping legal authority between municipalities and the province with regard to Sunday retail business law as set down in the Municipal Act and the Retail Business Uniform Closing Day Act.

Section 4

Summary of Recommendations

Recommendation #1

The Consultation Committee recommends that the Executive Council of the Province of Nova Scotia immediately repeal the March 1990 Regulation made pursuant to the Retail Business Uniform Closing Day Act which allowed any retail outlet with a sales area of less than 4,000 square feet to open on Sunday except on Easter Sunday or when Canada Day, Christmas Day, Boxing Day or New Year's Day falls on a Sunday.

Recommendation #2

The Committee recommends that the current exemption for drugstores contained in Section 3(2) of the Act which reads;

"(a) the operation of a drug store except in a department store;"

be repealed and replaced with a clause reading;

"(a) the operation of a drugstore except

(i) in a department store; or

(ii) where the retail sales area including the pharmacy but excluding patient counselling areas, medical appliance fitting areas, office space and storage space exceeds five thousand square feet defined either by a permanent structure or by a semi-permanent, movable, floor-to-ceiling, non-transparent barrier."

The Committee also recommends that drugstore operators be given a three year grace period in which to conform to this restriction.

Recommendation #3

The Committee recommends that the exemption for convenience stores provided by regulation pursuant to Section 3, subsection (2), clause (s) of the Act which reads;

"(c) a local or convenience retail store, the primary purpose of which is the sale of groceries and operates at all times with a retail sales area not in excess of four thousand square feet;"

not be changed.

Recommendation #4

The Committee recommends that the current exemption provided by regulation pursuant to Section 3, subsection

(2), clause (s) of the Act that reads;

"(e) a flea market or rummage sale;"

be repealed and replaced with a regulation that reads;

"second hand outlets, such as flea markets, rummage sales and stores whose principal business is the sale of used clothing, used household goods, shopworn or damaged manufactured items, as well as handcrafts and homebaked goods; but not including the sale of new manufactured merchandise".

Recommendation #5

The Committee recommends that government consider amending the Retail Business Uniform Closing Day Act to include a clause which would prevent the Act from possibly infringing on the freedom of religion of those people who observe a day other than Sunday as the Sabbath or day of rest.

Recommendation #6:

The Committee recommends that an in-depth legal analysis be done to ensure that there is no overlapping legal authority between municipalities and the province with regard to Sunday retail business law as set down in the Municipal Act and the Retail Business Uniform Closing Day Act.

Section 5

Conclusion

Sunday shopping is a social and economic issue.

Since there is no demonstrated economic benefit to Sunday shopping, the social consequences are the more important factor to be considered. The Consultation Committee found these consequences to be overwhelmingly negative.

It is accepted by the Committee that people need a day of rest each week for themselves and their families. The Committee is convinced there is even more value in a common day of rest shared by the majority which allows families to share time with each other rather than each family member having their own "day off". In an increasingly complex and divergent world, these values cannot be dismissed.

The people of Nova Scotia are this province's greatest resource and this resource must be allowed time in order to maintain and protect family and community ties. Sunday shopping means a very serious erosion of that time.

There is a small amount of consumer convenience to be had from Sunday shopping, but that small benefit is overwhelmed by the serious social consequences.

The Committee heard from a number of people who would appreciate the convenience of Sunday shopping, but at the same time refused to work on Sunday themselves. The fact is that one is not possible without the other. Someone has to be behind the counter in the store. Sunday shopping means Sunday working.

In the course of its hearings the Committee heard from a large number of representatives of management and staff in the retail industry in Nova Scotia. Through figures provided by those people and research of its own, the Committee estimates those representatives spoke for approximately 65,000 members of the retail industry in this province. Of that number, the overwhelming majority came out strongly against Sunday store openings on any other than an essential basis.

The submissions heard by and the correspondence received by the Committee clearly show that Nova Scotians want essential goods and services plus appropriate recreational opportunities available to them on Sunday. The Committee feels that that should be the extent to which Sunday business is done in this province and this should be reflected in the legislation.

As Don Regier of Sears Canada, Halifax pointed out in his submission to the Committee, "the laws of the land need to reflect the values of the people". It is the Committee's firmly held belief that the change made to the Retail Business Uniform Closing Day Act in March 1990 does not "reflect the values of the people" and therefore should be changed as recommended.

Nova Scotians expect their provincial government to see that these closely held values are reflected and protected.

There are those who see Sunday shopping as inevitable. The Committee does not agree. The Committee, based on the clear evidence presented to it, sees Sunday shopping as socially regressive. Those areas of Canada

and the United States which feel otherwise are entitled to their views, but those views are not shared by the vast majority of Nova Scotians.

During the course of its hearings the Committee heard some references to a so-called "silent majority" of Nova Scotians who are in favour of Sunday shopping.

The Committee invited and encouraged all sides of this issue to express their views.

However, based on the written and oral presentations received, the Committee found no basis to support the assertion that such a "silent majority" exists.

From the implementation of the March 1990 regulation allowing the vast majority of retail outlets to open, until the Committee's hearings in November 1990 (a period of 9 months) there was very little consumer demand for Sunday store openings. The Committee questioned a large number of retailers and the overwhelming majority of them reported no significant consumer demand for Sunday openings of their stores.

As a result, there were very few business openings on Sunday in response to the opportunity presented by the March 1990 regulation. Evidence presented to the Committee indicated that of the small number of stores that did open, most have since closed due to this lack of consumer demand.

If this large group demanding Sunday shopping did exist, their presence would have been felt in the marketplace and retailers would have responded accordingly. This simply hasn't happened.

The Committee would like to stress the need for stability and a long term commitment by the provincial government to the restrictions recommended in this report as well as those currently found within the Retail Business Uniform Closing Day Act. It is very disruptive to the retail community to have changes being made to these regulations, especially with regard to the allowable size of convenience grocery stores. The Committee feels there must be a long term commitment to the current 4,000 square foot limit. If a change is needed at some point in the future, that need must

be very clearly demonstrated. Changes to this Act must not be made in order to satisfy small interest groups or to satisfy any short-term needs. The impact of these changes should not be underestimated and some rigidity must exist in order to maintain stability for the workforce and the retail industry itself.

In conclusion, based on what it has heard, read and studied, the Consultation Committee on the Retail Business Uniform Closing Day Act is secure in stating that Nova Scotians do not want Sunday shopping.

SECTION 6 - APPENDIX

Summary of those presenting opinions to the Consultation Committee

1. List of presenters (afternoon sessions)

2. Number of members of general public who attended evening sessions.

3. Total (including correspondence)

SECTION 6 - APPENDIX A(1)

List of Presenters (Afternoon Sessions)

Truro - Thursday, November 1, 1990

1. Richard L. Provencher - Truro Development Corporation Ltd.
2. Allen Johnson - Atlantic Building Supply Dealers' Association
3. Tim Dietrich - Home Hardware
4. Tim Hoegg - Truro Chamber of Commerce and Central Nova Tourist Association
5. Harry Pridham - Pridham's Studios

Amherst - Friday, November 2, 1990

6. Charles Harrison - Harrison's Home Care
7. Rev. Michelle Smith - Maritime Conference, United Church of Canada
8. Willy MacDonald - Home Hardware, Amherst
9. Greg Fennel & Irene Coswell - Amherst Co-op

Dartmouth - Friday, November 16, 1990

10. Willard Tutty - Dartmouth Chamber of Commerce, Retail Committee
11. Dan Landry - Dartmouth Building Supply
12. Ron Lane - Tourism Industry Association of Nova Scotia
13. Judy Devine - Frenchy's, Lower Sackville

Halifax - Tuesday, November 20, 1990

14. Peter O'Brien - Canadian Federation of Independent Business

15. Sherry Porter - Canadian Council of Grocery Distributors

16. Carol MacDonald - Coalition Against Open Sunday Shopping

17. Blair Douglas - Canadian Retail Hardware Association

18. Atlantic Wholesalers Ltd.

19. Don Regier - Sears, Halifax

20. John Holm - M.L.A., Sackville and Consumer Affairs Critic, N. S. New Democratic Party

21. Bob Yorston - Executive Vice-President, Regional Head, Atlantic Division, Shoppers Drug Mart & Warren Meek, Shoppers Drug Mart, Dutch Village Road

New Glasgow - Wednesday, November 21, 1990

22. Rev. Ken Stright - Pictou County Council of Churches

23. Kate Kennedy - Pictou West Liberal Association, Retailer, Town Councillor

24. Jack Langlois - Pictou County Chamber of Commerce, Retail Committee

25. Gerry Radcliffe - Canadian Tire Dealer
George Vasil - Nova Scotia Canadian Tire Dealers' Association

26. John Ward - Atlantic Building Supply Dealers' Association
Jim Grant - President, J.J. Grant Ltd., New Glasgow

27. Roman Catholic Deanery of Pictou County

28. Gary Yorston - Shopper's Drug Mart, New Glasgow
Cathy Pelton - Shopper's Drug Mart, Trenton

29. Jack Conrad - New Glasgow Development Corporation

30. Ron Carlyle - Vice-President, Merchants' Association, Highland Square Mall

31. Everett Smith - C. P. Smith and Co., and Trinity United Church

32. Mr. Ron Jones - Retailer

33. Mr. George Barrett - Stellarton Ministerial Association

34. Rev. Charles McPherson - Presbytery of Pictou, Presbyterian Church of Canada

35. Rev. Morley Shaw, First Baptist Church

36. Trinity United Church

Port Hawkesbury - Thursday, November 22, 1990

37. Mike Kennedy - Shopper's Drug Mart

38. Alex McKinnon - Port Hawkesbury Chamber of Commerce
Phil Landry - Port Hawkesbury Chamber of Commerce

39. Ralph Neill - Town of Port Hawkesbury

40. Rev. Donald Sutherland - United Church

Sydney - Friday, November 23, 1990

41. Craig Winsor - Shopper's Drug Mart
Errol Jamieson - Shopper's Drug Mart

42. Dave Gillis and Dave Yurchesyn - Atlantic Building Supply Dealers' Association

43. Paul Perry - Business Improvement District Commission, North Sydney

44. Daniel McKeough - Pharmacy Association of Nova Scotia

45. Jennifer MacDonald - Industrial Cape Breton Board of Trade

46. Sterling MacVicar - Men's Brotherhood; United Protestant Church, Sydney River

47. Heather Patterson - Marks & Spencer

48. Russell McKinnon - M.L.A., Cape Breton West

Yarmouth - Wednesday, November 28, 1990

49. Don Sands - Pastor, Digby 7th Day Adventist Church

50. Barry MacGregor - Yarmouth County Tourist Association

51. Brian McGillivray - Manager, Human Resources, Kent Building Supplies

52. Len Smith - Smitty's Used Clothing

53. Rev. Ray Corbett - Yarmouth County Protestant Ministerial Institute

54. Peter D'entremont - Co-op

55. Ronald Robichaud - Hometown Market Ltd.; Councillor, Municipality of Clare

56. Bob Yorston, Aubrey Brown, Arthur Konviser and Julie Carruthers - Shopper's Drug Mart

Bridgewater, Thursday, November 29, 1990

57. Rev. Clyde Slauenwhite - Bridgewater Ministerial Association

58. Rene Quigley - Bakery, Confectionery & Tobacco Workers

59. Eric Hustvedt - Lunenburg West N.D.P. Association

60. Peter Gow - Gow's Home Hardware

61. Marilyn Crook - South Shore Labour Council

62. Don Wilson - South Shore Tourism Association

63. William Vervoort - Canadian Tire Dealer

64. Susan Lane - Lane's Privateer Inn

65. Alan Legere - Town & Country Co-op

66. Arthur Young - Frency's, Branch LaHave

Kentville - Friday, November 30, 1990

67. Hilary Sircom - President, Wolfville Business Development Corporation

68. Bruce Campbell, Bill Lightfoot and John Crowe - Convenience Store Operators

69. Don Kyte - Pharmasave Ltd.

70. Chops Viger - Candian Tire

71. Leo MacKay, Rick Clarke & Garnie Parker - N. S. Federation of Labour

72. Mayor Dorine Taylor - Town of Kentville

73. Rev. S. J. Davies - Chairman, Kentville & District Council of Churches

74. Doug Hageman - Atlantic Baptist Convention

75. Fred Wade - Wade Enterprises

76. Heather Williams - Kentville Development Corporation

77. Eric Frank - Kent Co-op, New Minas

78. George Lohnes - Kentville United Baptist Church

79. Douglas Morrison - Valley Stationers

80. Marianne Morison - Don Chase Ltd.

NOTE: According to the figures provided by the various presenters and research done by the Committee, approximately 65,000 members of the retail industry in Nova Scotia are represented by these presentations.

APPENDIX A(2)

Summary - Number of people attending public sessions (evening)

Truro	9
Amherst	9
Dartmouth	11
Halifax	16
New Glasgow	16
Port Hawkesbury	1
Sydney	3
Yarmouth	6
Bridgewater	18
Kentville	13
TOTAL	103

APPENDIX A(3)

TOTALS

(a)	80	presentations in afternoon
(b)	103	people attended public sessions in evening
(c)	13	letters to the committee
	196	TOTAL